

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 SARAH J. JACOBS
Deputy Attorney General
4 State Bar No. 255899
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2312
Facsimile: (559) 445-5106
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 800-2017-034308

14 **SHANNON K. SMITH, M.D.**
15 **Kaiser Permanente**
16 **P.O. Box 12099**
17 **Bakersfield, CA 93301**

OAH No. 2019010172

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 **Physician's and Surgeon's Certificate No. G**
19 **57481**

Respondent.

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Sarah J. Jacobs,
26 Deputy Attorney General.

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 800-2017-034308.

4 10. Respondent agrees that her Physician's and Surgeon's Certificate is subject to
5 discipline and she agrees to be bound by the Board's probationary terms as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Medical Board of California.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
10 Board of California may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent or her counsel. By signing the
12 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
19 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
20 signatures thereto, shall have the same force and effect as the originals.

21 13. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 57481 issued
26 to Respondent Shannon K. Smith, M.D. is revoked. However, the revocation is stayed and
27 Respondent is placed on probation for five (5) years on the following terms and conditions.

28 1. ALCOHOL AND CONTROLLED SUBSTANCES - ABSTAIN FROM USE.

Respondent shall abstain completely from the use of products or beverages containing alcohol and abstain from the use of controlled substances.

2. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);

1 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
2 history and current medical condition; the nature, duration and severity of Respondent's
3 substance abuse problem or problems; and whether Respondent is a threat to herself or the
4 public.

5 For all clinical diagnostic evaluations, a final written report shall be provided to the Board
6 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator
7 requests additional information or time to complete the evaluation and report, an extension may
8 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally
9 assigned the matter.

10 The Board shall review the clinical diagnostic evaluation report within five (5) business
11 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
12 practice and what restrictions or recommendations shall be imposed on Respondent based on the
13 recommendations made by the evaluator. Respondent shall not be returned to practice until she
14 has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
15 that she has not used, consumed, ingested, or administered to herself a prohibited substance, as
16 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

17 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
18 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic
19 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
20 designee, shall be borne by the licensee.

21 Respondent shall not engage in the practice of medicine until notified by the Board or its
22 designee that she is fit to practice medicine safely. The period of time that Respondent is not
23 practicing medicine shall not be counted toward completion of the term of probation. Respondent
24 shall undergo biological fluid testing as required in this Decision at least two (2) times per week
25 while awaiting the notification from the Board if she is fit to practice medicine safely.

26 Respondent shall comply with all restrictions or conditions recommended by the examiner
27 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified
28 by the Board or its designee.

1 3. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
2 days of the effective date of this Decision, Respondent shall provide to the Board the names,
3 physical addresses, mailing addresses, and telephone numbers of any and all employers and
4 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
5 worksite monitor, and Respondent's employers and supervisors to communicate regarding-
6 Respondent's work status, performance, and monitoring.

7 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
8 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
9 privileges.

10 4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
11 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
12 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
13 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
14 make daily contact with the Board or its designee to determine whether biological fluid testing is
15 required. Respondent shall be tested on the date of the notification as directed by the Board or its
16 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
17 any time, including weekends and holidays. Except when testing on a specific date as ordered by
18 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
19 basis. The cost of biological fluid testing shall be borne by the Respondent.

20 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
21 During the second year of probation and for the duration of the probationary term, up to five (5)
22 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
23 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
24 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
25 of random tests to the first-year level of frequency for any reason.

26 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
27 approved in advance by the Board or its designee, that will conduct random, unannounced,
28 observed, biological fluid testing and meets all of the following standards:

- 1 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
2 Association or have completed the training required to serve as a collector for the United
3 States Department of Transportation.
- 4 (b) Its specimen collectors conform to the current United States Department of
5 Transportation Specimen Collection Guidelines.
- 6 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
7 by the United States Department of Transportation without regard to the type of test
8 administered.
- 9 (d) Its specimen collectors observe the collection of testing specimens.
- 10 (e) Its laboratories are certified and accredited by the United States Department of Health
11 and Human Services.
- 12 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
13 of receipt and all specimens collected shall be handled pursuant to chain of custody
14 procedures. The laboratory shall process and analyze the specimens and provide legally
15 defensible test results to the Board within seven (7) business days of receipt of the
16 specimen. The Board will be notified of non-negative results within one (1) business day
17 and will be notified of negative test results within seven (7) business days.
- 18 (g) Its testing locations possess all the materials, equipment, and technical expertise
19 necessary in order to test Respondent on any day of the week.
- 20 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
21 for the detection of alcohol and illegal and controlled substances.
- 22 (i) It maintains testing sites located throughout California.
- 23 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
24 computer database that allows the Respondent to check in daily for testing.
- 25 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
26 access to drug test results and compliance reporting information that is available 24 hours a
27 day.
- 28 (l) It employs or contracts with toxicologists that are licensed physicians and have

1 knowledge of substance abuse disorders and the appropriate medical training to interpret
2 and evaluate laboratory biological fluid test results, medical histories, and any other
3 information relevant to biomedical information.

4 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
5 while practicing, even if the Respondent holds a valid prescription for the substance.

6 Prior to changing testing locations for any reason, including during vacation or other travel,
7 alternative testing locations must be approved by the Board and meet the requirements above.

8 The contract shall require that the laboratory directly notify the Board or its designee of
9 non-negative results within one (1) business day and negative test results within seven (7)
10 business days of the results becoming available. Respondent shall maintain this laboratory or
11 service contract during the period of probation.

12 A certified copy of any laboratory test result may be received in evidence in any
13 proceedings between the Board and Respondent.

14 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
15 administered to herself a prohibited substance, the Board shall order Respondent to cease practice
16 and instruct Respondent to leave any place of work where Respondent is practicing medicine or
17 providing medical services. The Board shall immediately notify all of Respondent's employers,
18 supervisors and work monitors, if any, that Respondent may not practice medicine or provide
19 medical services while the cease-practice order is in effect.

20 A biological fluid test will not be considered negative if a positive result is obtained while
21 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
22 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

23 After the issuance of a cease-practice order, the Board shall determine whether the positive
24 biological fluid test is in fact evidence of prohibited substance use by consulting with the
25 specimen collector and the laboratory, communicating with the licensee, his or her treating
26 physician(s), other health care provider, or group facilitator, as applicable.

27 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
28 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

1 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
2 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
3 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
4 instructed by the Board not to use, consume, ingest, or administer to herself.

5 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
6 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
7 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
8 any other terms or conditions the Board determines are necessary for public protection or to
9 enhance Respondent's rehabilitation.

10 5. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
11 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
12 prior approval, the name of a substance abuse support group which she shall attend for the
13 duration of probation. Respondent shall attend substance abuse support group meetings at least
14 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
15 abuse support group meeting costs.

16 The facilitator of the substance abuse support group meeting shall have a minimum of three
17 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
18 or certified by the state or nationally certified organizations. The facilitator shall not have a
19 current or former financial, personal, or business relationship with Respondent within the last five
20 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
21 the same facilitator does not constitute a prohibited current or former financial, personal, or
22 business relationship.

23 The facilitator shall provide a signed document to the Board or its designee showing
24 Respondent's name, the group name, the date and location of the meeting, Respondent's
25 attendance, and Respondent's level of participation and progress. The facilitator shall report any
26 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
27 or its designee, within twenty-four (24) hours of the unexcused absence.

28 6. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty ,

1 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
2 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
3 licensed physician and surgeon, other licensed health care professional if no physician and
4 surgeon is available, or, as approved by the Board or its designee, a person in a position of
5 authority who is capable of monitoring the Respondent at work.

6 The worksite monitor shall not have a current or former financial, personal, or familial
7 relationship with Respondent, or any other relationship that could reasonably be expected to
8 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
9 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
10 monitor, this requirement may be waived by the Board or its designee, however, under no
11 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

12 The worksite monitor shall have an active unrestricted license with no disciplinary action
13 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
14 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
15 by the Board or its designee.

16 Respondent shall pay all worksite monitoring costs.

17 The worksite monitor shall have face-to-face contact with Respondent in the work
18 environment on as frequent a basis as determined by the Board or its designee, but not less than
19 once per week; interview other staff in the office regarding Respondent's behavior, if requested
20 by the Board or its designee; and review Respondent's work attendance.

21 The worksite monitor shall verbally report any suspected substance abuse to the Board and
22 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
23 substance abuse does not occur during the Board's normal business hours, the verbal report shall
24 be made to the Board or its designee within one (1) hour of the next business day. A written
25 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
26 any other information deemed important by the worksite monitor shall be submitted to the Board
27 or its designee within 48 hours of the occurrence.

28 The worksite monitor shall complete and submit a written report monthly or as directed by

1 the Board or its designee which shall include the following: (1) Respondent's name and
2 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
3 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
4 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
5 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
6 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
7 lead to suspected substance abuse by Respondent. Respondent shall complete any required
8 consent forms and execute agreements with the approved worksite monitor and the Board, or its
9 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

10 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
11 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
12 approval, the name and qualifications of a replacement monitor who will be assuming that
13 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
14 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
15 monitor, Respondent shall receive a notification from the Board or its designee to cease the
16 practice of medicine within three (3) calendar days after being so notified. Respondent shall
17 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
18 responsibility.

19 7. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
20 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
21 probation.

22 A. If Respondent commits a major violation of probation as defined by section
23 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
24 one or more of the following actions:

25 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
26 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
27 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
28 order issued by the Board or its designee shall state that Respondent must test negative for at least

1 a month of continuous biological fluid testing before being allowed to resume practice. For
2 purposes of determining the length of time a Respondent must test negative while undergoing
3 continuous biological fluid testing following issuance of a cease-practice order, a month is
4 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
5 notified in writing by the Board or its designee that she may do so.

6 (2) Increase the frequency of biological fluid testing.

7 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
8 other action as determined by the Board or its designee.

9 B. If Respondent commits a minor violation of probation as defined by section
10 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
11 one or more of the following actions:

12 (1) Issue a cease-practice order;

13 (2) Order practice limitations;

14 (3) Order or increase supervision of Respondent;

15 (4) Order increased documentation;

16 (5) Issue a citation and fine, or a warning letter;

17 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
18 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
19 Regulations, at Respondent's expense;

20 (7) Take any other action as determined by the Board or its designee.

21 C. Nothing in this Decision shall be considered a limitation on the Board's authority
22 to revoke Respondent's probation if she has violated any term or condition of probation. If
23 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
24 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
25 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
26 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
27 is final, and the period of probation shall be extended until the matter is final.

28 8. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

10. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

11. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice,
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 13. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
16 available in person upon request for interviews either at Respondent's place of business or at the
17 probation unit office, with or without prior notice throughout the term of probation.

18 14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine as defined in Business and
22 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
23 patient care, clinical activity or teaching, or other activity as approved by the Board. If
24 Respondent resides in California and is considered to be in non-practice, Respondent shall
25 comply with all terms and conditions of probation. All time spent in an intensive training
26 program which has been approved by the Board or its designee shall not be considered non-
27 practice and does not relieve Respondent from complying with all the terms and conditions of
28 probation. Practicing medicine in another state of the United States or Federal jurisdiction while

on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceed 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

15. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

16. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the

1 application shall be treated as a petition for reinstatement of a revoked certificate.

2 17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
3 with probation monitoring each and every year of probation, as designated by the Board, which
4 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
5 California and delivered to the Board or its designee no later than January 31 of each calendar
6 year.

7
8 ACCEPTANCE

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Gary Wittenberg. I understand the stipulation and the effect it will
11 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
12 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
13 Decision and Order of the Medical Board of California.

14
15
16 DATED:

4/17/2019

Shannon K. Smith MD

SHANNON K. SMITH, M.D.
Respondent

18 I have read and fully discussed with Respondent Shannon K. Smith, M.D. the terms and
19 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
20 I approve its form and content.

21
22
23 DATED:

4/17/19

GARY WITTENBERG
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order in the matter of Shannon K. Smith, M.D., is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 4-18-19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General



SARAH J. JACOBS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034308

1 XAVIER BECERRA
2 Attorney General of California
3 STEVE DEIHL
4 Supervising Deputy Attorney General
5 MICHAEL C. BRUMMEL
6 Deputy Attorney General
7 State Bar No. 236116
8 California Department of Justice
9 2550 Mariposa Mall, Room 5090
10 Fresno, CA 93721
11 Telephone: (559) 705-2307
12 Facsimile: (559) 445-5106
13 E-mail: Michael.Brummel@doj.ca.gov

14 *Attorneys for Complainant*

15 **BEFORE THE**
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18 **STATE OF CALIFORNIA**

19 In the Matter of the Accusation Against:

Case No. 800-2017-034308

20 **Shannon K. Smith, M.D.**
21 **Kaiser Permanente**
22 **P.O. Box 12099**
23 **Bakersfield, CA 93301**

A C C U S A T I O N

24 **Physician's and Surgeon's Certificate**
25 **No. G 57481,**

26 Respondent.

27 Complainant alleges:

28 **PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about June 16, 1986, the Medical Board issued Physician's and Surgeon's Certificate No. G 57481 to Shannon K. Smith, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought

1 herein and will expire on February 29, 2020, unless renewed.

2 **JURISDICTION**

3 3. This Accusation is brought before the Board, under the authority of the following
4 laws. All section references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 802.1 of the Code states:

6 “(a)(1) A physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric
7 medicine, and a physician assistant shall report either of the following to the entity that issued his
8 or her license:

9 “(A) The bringing of an indictment or information charging a felony against the licensee.

10 “(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no
11 contest, of any felony or misdemeanor.

12 “(2) The report required by this subdivision shall be made in writing within 30 days of the
13 date of the bringing of the indictment or information or of the conviction.

14 “(b) Failure to make a report required by this section shall be a public offense punishable
15 by a fine not to exceed five thousand dollars (\$5,000).”

16 5. Section 2227 of the Code states:

17 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
18 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
19 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
20 action with the board, may, in accordance with the provisions of this chapter:

21 “(1) Have his or her license revoked upon order of the board.

22 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
23 order of the board.

24 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
25 order of the board.

26 “(4) Be publicly reprimanded by the board. The public reprimand may include a
27 requirement that the licensee complete relevant educational courses approved by the board.

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1 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
2 the board or an administrative law judge may deem proper.

3 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
4 review or advisory conferences, professional competency examinations, continuing education
5 activities, and cost reimbursement associated therewith that are agreed to with the board and
6 successfully completed by the licensee, or other matters made confidential or privileged by
7 existing law, is deemed public, and shall be made available to the public by the board pursuant to
8 Section 803.1.”

9 6. Section 2234 of the Code, states, in pertinent part:

10 “The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter.

15 “... ”

16 “(f) Any action or conduct which would have warranted the denial of a certificate.

17 “... ”

18 7. Section 2236 of the Code states:

19 “(a) The conviction of any offense substantially related to the qualifications, functions, or
20 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
21 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
22 evidence only of the fact that the conviction occurred.

23 “... ”

24 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
25 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
26 shall be conclusive evidence of the fact that the conviction occurred.”

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1 8. Section 2239 of the Code states:

2 “(a) The use or prescribing for or administering to himself or herself, of any controlled
3 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,
7 consumption, or self-administration of any of the substances referred to in this section, or any
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is
9 conclusive evidence of such unprofessional conduct.

10 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
11 deemed to be a conviction within the meaning of this section. The Medical Board may order
12 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
13 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
14 affirmed on appeal or when an order granting probation is made suspending imposition of
15 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
16 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
17 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
18 indictment.”

19 9. California Code of Regulations, title 16, section 1360, states:

20 “For the purposes of denial, suspension or revocation of a license, certificate or permit
21 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
22 considered to be substantially related to the qualifications, functions or duties of a person holding
23 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
24 evidences present or potential unfitness of a person holding a license, certificate or permit to
25 perform the functions authorized by the license, certificate or permit in a manner consistent with
26 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
27 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
28 violation of, or conspiring to violate any provision of the Medical Practice Act.”

FIRST CAUSE FOR DISCIPLINE

(Violation of the Medical Practice Act)

10. Respondent has subjected her Physician's and Surgeon's License No. G 57481 to disciplinary action under section 2227, as defined by section 2234, subdivision (a), in that she violated or attempted to violate, directly or indirectly the Medical Practice Act. The circumstances are as follows:

11. On or about January 25, 2016, Respondent was out at a restaurant drinking with a friend. She returned to his home for several hours, before deciding to return to her own home. Respondent drove her car to the In-N-Out Burger on her way home. While in the drive through line, she collided with the vehicle in front of her. A dispute arose between the drivers and the driver of the other vehicle called the police department.

12. On or about January 25, 2016 at 23:30, a police officer reported to the In-N-Out Burger in Bakersfield regarding a disturbance resulting from a non-injury vehicle collision. Officer Robles observed that Respondent's eyes were watery, slightly red, and she was emitting an odor of alcoholic beverages from her breath. Respondent told Officer Robles that she had not had anything at all to drink prior to driving her vehicle. Respondent told officers that she was looking at her phone when the collision occurred. Respondent agreed to participate in a number of field sobriety tests to determine if she was safely able to operate a motor vehicle.

13. Respondent performed the horizontal gaze nystagmus, walk and turn, and one leg stand field sobriety tests. During the horizontal gaze nystagmus test, Respondent exhibited a lack of smooth pursuit in both eyes, was positive for distinct and sustained horizontal gaze nystagmus at maximum deviation in both eyes, and had an angle of onset of nystagmus prior to 45 degrees. During the walk and turn test, Respondent was unable to maintain her right foot in front of her left foot in a heel to toe manner during the instructional phase, missed her heel to toe by more than two inches on her first nine steps, and stepped off of the line on the third and seventh step. On the return, Respondent turned without pivoting her foot, missed the heel to toe and stepped out of line on the second through eighth steps. Respondent raised her arms more than six inches from her body for the duration of the test. During the one leg stand test, Respondent stood on her

1 left foot and lifted her right foot off of the ground. Respondent needed to put her foot down on
2 count thirteen, and began to count again from the beginning. Respondent raised her right arm
3 more than six inches from her body during the duration of the test. Due to Respondent's
4 performance on the field sobriety tests, a police officer asked her to participate in a preliminary
5 alcohol screening breath test. Respondent provided a breath sample for the preliminary alcohol-
6 screening test that indicated a .131% blood alcohol level at 23:50. Respondent elected to provide
7 a blood sample for the evidentiary alcohol screening, which revealed a blood alcohol level of
8 .156% at 00:48 on January 26, 2016.

9 14. On or about February 4, 2016, in a criminal proceeding entitled *People of the State of*
10 *California vs. Shannon Kay Smith*, Kern County Superior Court Case No. BM878733A,
11 Respondent was charged with misdemeanor violations of Vehicle Code section 23152(a), and
12 23152(b).

13 15. On or about June 16, 2016, in a criminal proceeding entitled *People of the State of*
14 *California vs. Shannon Kay Smith*, Kern County Superior Court Case No. BM878733A,
15 Respondent was convicted upon her plea of nolo contendere to a charge of Vehicle Code section
16 23103.5(a), a misdemeanor, and the remaining counts were dismissed. The Court sentenced
17 Respondent to three (3) years probation and ordered Respondent to pay fines and fees, serve four
18 days in custody, participate in a three-month drug alcohol treatment program, and install an
19 ignition interlock device on her vehicle, not to drive with any measurable amount of alcohol in
20 her blood, submit to chemical testing by any peace officer, and submit to search and seizure while
21 on probation.

22 16. On or about January 19, 2017, at approximately 00:54, a police officer was
23 dispatched to a solo vehicle traffic collision. Upon arrival, the officer observed Respondent's
24 vehicle straddling the center median. Respondent asked, "Do you need me to pull over officer?"
25 Respondent displayed signs and symptoms of being under the influence of alcohol including a
26 strong odor of an alcoholic beverage coming from her breath and person, an unsteady gate and
27 slurred speech. The police officer asked her how much alcohol she had to drink and she
28 responded with slurred speech, "Am I going to jail?" The police officer repeated the question and

1 Respondent replied, "I already know I'm going to jail." Respondent exited her vehicle, unsteady
2 on her feet, and attempted to walk, with the assistance of the police officer, off of the median and
3 to the side of the street. Respondent failed to raise her feet high enough to step over the center
4 median, tripped, and fell to the ground on her left side. The police officer assisted Respondent to
5 her feet and safely to the curb line on the side of the street. Respondent agreed to participate in a
6 number of field sobriety tests.

7 17. Respondent performed the horizontal gaze nystagmus, and the walk and turn field
8 sobriety tests. During the horizontal gaze nystagmus test, Respondent exhibited a lack of smooth
9 pursuit in both eyes, sustained nystagmus in both eyes at maximum deviation, and an angle of
10 onset of nystagmus prior to 45 degrees in both eyes. During the walk and turn test, Respondent
11 had difficulty maintaining her balance as she was swaying left to right. Respondent fell
12 backwards and was caught by a police officer before hitting the ground. The police concluded the
13 standard field sobriety tests due to concerns for Respondent's safety. Respondent provided a
14 breath sample for the preliminary alcohol-screening test that indicated a .227% blood alcohol
15 level at 01:21. Respondent elected to provide a breath sample for the evidentiary alcohol
16 screening, which revealed a blood alcohol level of .220% at 01:27 and .229% at 01:30.

17 18. Respondent told the officers that she was employed as a physician and gets extremely
18 stressed with her work. She explained that she drinks to calm herself down and deal with her
19 stress. Respondent told the officers that she was drinking at a local bar with friends. After
20 meeting with her friends, she decided to drive herself to a second location known as the
21 Belvedere Lounge. Later that evening, Respondent decided to drive herself home. Respondent
22 stated that she did not remember how she ended up on top of the median.

23 19. On or about February 3, 2017, in a criminal proceeding entitled *People of the State of*
24 *California vs. Shannon Kay Smith*, Kern County Superior Court Case No. BM899551A,
25 Respondent was charged with misdemeanor violations of Vehicle Code sections 23152(a),
26 23152(b), and 16028(c).

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1 20. On or about June 9, 2017, in a criminal proceeding entitled *People of the State of*
2 *California vs. Shannon Kay Smith*, Kern County Superior Court Case No. BM899551A,
3 Respondent was convicted upon her plea of nolo contendere to a charge of Vehicle Code section
4 23152(b) (driving with a blood alcohol content of .08% or more), a misdemeanor, and the
5 remaining counts were dismissed. The Court sentenced Respondent to three (3) years probation
6 and ordered Respondent to pay fines and fees, obey all laws, serve 45 days in jail, attend 30 AA
7 meetings, participate in a three-month drug alcohol treatment program, and install an ignition
8 interlock device on her vehicle, not to drive with any measurable amount of alcohol in her blood,
9 submit to chemical testing by any peace officer, and submit to search and seizure while on
10 probation.

11 21. On or about May 22, 2018, Respondent participated in a voluntary interview with
12 investigators from the State of California, Department of Consumer Affairs, Health Quality
13 Investigation Unit. Respondent admitted to both incidents of driving under the influence.
14 Respondent admitted that she had never reported either of her two convictions for misdemeanors
15 to the Board. Respondent stated that she was not aware of the requirement to report the arrest and
16 conviction until some time shortly before the interview with investigators. In contrast with the
17 explanation provided to officers at the time of her arrest, Respondent now stated that the cause of
18 her collision resulting her arrest for driving under the influence in 2016 was that she was looking
19 for change in her car.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Conduct Warranting Denial of a Certificate)**

22 22. Respondent has subjected her Physician's and Surgeon's License No. G 57481 to
23 disciplinary action under section 2227, as defined by section 2234, subdivision (f), in that she
24 engaged in action or conduct that would have warranted the denial of a certificate, as more
25 particularly alleged in paragraphs 11 through 21, which is hereby incorporated by reference and
26 realleged as if fully set forth herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime)**

3 23. Respondent has subjected her Physician's and Surgeon's License No. G 57481 to
4 disciplinary action under section 2227, as defined by section 2236, in that she was convicted of an
5 offense substantially related to the qualifications, functions or duties of a physician and surgeon,
6 as more particularly alleged in paragraphs 11 through 21, which is hereby incorporated by
7 reference and realleged as if fully set forth herein.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Use of Alcohol Dangerous to Licensee or Others)**

10 24. Respondent has subjected her Physician's and Surgeon's License No. G 57481 to
11 disciplinary action under section 2227, as defined by section 2239, in that she used alcoholic
12 beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to
13 any other person or to the public, as more particularly alleged in paragraphs 11 through 21, which
14 is hereby incorporated by reference and realleged as if fully set forth herein.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Report Misdemeanor Conviction)**

17 25. Respondent has subjected her Physician's and Surgeon's License No. G 57481 to
18 disciplinary action under section 2227, as defined by sections 2234 and 802.1, in that she was
19 convicted of a misdemeanor offense and failed to report the conviction in writing to the Board
20 within 30 days of the conviction, as more particularly alleged in paragraphs 11 through 21, which
21 is hereby incorporated by reference and realleged as if fully set forth herein.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Medical Board of California issue a decision:

25 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 57481, issued
26 to Shannon K. Smith, M.D.;

27 2. Revoking, suspending or denying approval of Shannon K. Smith, M.D.'s authority to
28 supervise physician assistants and advanced practice nurses;

1 3. Ordering Shannon K. Smith, M.D., if placed on probation, to pay the Board the costs
2 of probation monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.
4

5 DATED:
6 September 27, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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